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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 11/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/977,122

Applicant(s)

OWENS, JOHN

Examiner

Christopher Bottorff

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9,15-20 and 31-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9,15-20 and 31-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 14. 6) ☐ Other: _____

DETAILED ACTION

The amendment filed September 4, 2003 has been entered. Claims 1-8, 10-14, and 21-30 are canceled. Claims 31-61 are added. Claims 9, 15-20, and 31-61 are pending.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on September 25, 2003 was being considered by the examiner.

Drawings

The drawings were received on September 4, 2003. These drawings are approved.

Specification

The abstract of the disclosure is objected to because the expression "which tubular frame assembly" in line 1 is unclear. Also, the abstract should not include phrases that are implied, such as "The invention relates to" as stated on line 1. Correction is required. See MPEP § 608.01(b).

Claim Objections

Claims 58 and 60 are objected to because of the following informalities: line 6 of each claim recites the expression “ $\frac{1}{2}$ ” that does not clearly punctuate the claim. The “-“ should be canceled. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19, 32, 40, 41, 46, 48, 54-57 and 59-61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 48 recites the limitations “said support brackets” and “said cross members” in lines 1 and 2 respectively. Claim 54 recites the limitation “said plurality of walled recesses” in line 1. There is insufficient antecedent basis for these limitations in the claims. Perhaps claim 48 should depend from claim 47, which should depend from claim 44, and claim 54 should depend from claim 53.

Claims 19, 32, 40, 41, and 46 define a horizontal support member connecting the legs. Claims 9 and 15 define a horizontal support member connecting the frames. These claims appear to refer to distinct components but the use of the same terminology to define separate components makes this unclear. Correction is required. For the purposes of examination, the horizontal support member of claims 9, 15, 19, and 41 is interpreted as referring to brace 60 depicted in Figure 1 and the horizontal

support members of claims 32, 40, and 46 are interpreted as members 18 and 19 depicted in Figure 1.

In regard to claims 55-57 and 59-61, the components of the present invention that form the claimed bracket flanges and notches are not clearly disclosed. Consequently, the structure defined by the claimed flanges and notches cannot be determined. The Figures depict the brackets as having an outer end that engages the cross bars 42 and 43, and the outer end of the bracket is generally in the form of a curved flange that forms a notch on the underside of the flange. For the purposes of examination, the claimed flanges and notches have been interpreted as the generally curved outer ends of the brackets.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9, 32-34, 40, 41, 60, and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmerl US 3,354,893.

Schmerl discloses an ambulatory device comprising two side frames that each have a front leg 11, 12 and a back leg 13, 14, a horizontal support member connecting the front leg of each side frame and connecting members 17 and 18 forward of member 16, a seat 32 having a first front section and a second rear section that is pivotably

coupled to the side frames via member 16, and two support brackets 37 spaced from the second section. See Figure 1. The seat 32 has a first position with a substantially horizontal orientation and a second position with a substantially vertical orientation. See Figures 2 and 3. The support brackets 37 are disposed on either side of the seat and provide support to the device when the seat is in the first position, including distributing lateral force along the brackets and across the seat. Also, the support brackets 37 include a top surface and a flange extending substantially along the top surface.

A wheel 19 is connected to the each of the back legs. Substantially u-shaped horizontal support members 27, 28 connect the legs of each frame and a padded region 21 is located on at least one of the horizontal supports. Cross members 17, 18 connect the mid-section of the legs and the support brackets 37 secure the seat to the cross-members through a notch formed by the curved undersurface of the flanges of the brackets. Also, the horizontal support member that connects the front legs is curved outward away from the legs. See Figures 1 and 3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31, 38, 39, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmerl US 3,354,893 in view of Hara et al. US 6,494,469.

Schmerl does not disclose a wheel connected to each of the front legs, brakes that engage the wheels on the back legs, hand brake actuators positioned on the side frames, a back rest connecting the side frames, and that the support brackets are integrally molded to the seat.

However, Hara et al. teaches that providing an ambulatory device with a wheel 2, 4 connected to each of the front legs, brakes 120 that engage the wheels on the back legs, hand brake actuators 79 positioned on the side frames, and a back rest 8 connecting the side frames was old and well known in the art at the time the invention was made. See Figures 1-3 and column 13, lines 6-8.

From the teachings of Hara et al., connecting a wheel to each of the front legs of Schmerl, providing the device of Schmerl with brakes that engage the wheels on the back legs and hand brake actuators positioned on the side frames, and connecting the side frames of Schmerl with a back rest would have been obvious to one of ordinary skill in the art at the time the invention was made.

Connecting a wheel to each of the front legs of Schmerl would allow the device to be moved with less effort by an operator. Providing the device of Schmerl with brakes and hand brake actuators would give the operator control over the movement of the device. Also, connecting the side frames of Schmerl with a back rest would provide an operator with improved comfort and support when sitting on the seat.

Moreover, forming the seat brackets integral with the seat represents a design choice that would have been obvious to one of ordinary skill in the art at the time the invention was made in order to reduce the number of steps required in assembling the

device. Also, the examiner takes official notice that the process of molding was old and well known in the art at the time the invention was made. Forming the seat and seat bracket structure through molding would have been obvious to one of ordinary skill in the art at the time the invention was made in order to use a process that is familiar to manufacturing personnel.

Claims 35-37 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmerl US 3,354,893 in view of Battiston US 6,371,142.

Schmerl does not disclose length adjustment means for the front and back legs, that the seat is at least partially in front of the front legs when in the second position, a locking mechanism located on each of the side frames.

However, Battiston teaches that the practices of providing length adjustment means 20, 22 on each leg, arranging a seat 36 to be at least partially in front of the front legs when in the second position, and providing a locking mechanism 34 were old and well known in the art at the time the invention was made. See Figures 1, 2, 4, and 5. The locking mechanism 34 of Battiston is located on each of the side frames 12, maintains the side frames spaced a part and releasable to allow the side frames to pivot inwardly toward the seat when the seat is in the second position, and at least one side frame can pivot approximately 180 degrees when the locking mechanism is released. See Figure 1 and column 4, lines 14-20.

From the teachings of Battiston, providing the legs of Schmerl with length adjustment means, arranging the seat to be at least partially in front of the front legs

when the seat is in the second position, and providing a locking mechanism on each of the side frames would have been obvious to one of ordinary skill in the art at the time the invention was made.

Providing the legs of Schmerl with length adjustment means would allow the legs to be adjusted for height to suit the individual user. Arranging the seat of Schmerl to be at least partially in front of the front legs when the seat is in the second position would provide a user with greater room for movement between the side frames when the device is used as a walker. Providing a locking mechanism on each of the side frames of Schmerl would allow the device to be collapsed for compact storage.

Claims 15, 17-20, 45-47, 50, 51, 53-55, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson US 5,558,358 in view of Durkan, Jr. US 4,438,603.

Johnson discloses an ambulatory device comprising two side frames (12, 21, 32, 36 and 14, 22, 34, 38) that each have a front leg 12, 14 and a back leg 21, 22, a horizontal support member 26 connecting the front leg of each side frame, a seat 30 having a first front section and a second rear section that is pivotably coupled to the side frames, and two support brackets supporting clamps 40 that each comprise a top surface and a flange extending along the top surface. See Figure 1. The seat has a first position with a substantially horizontal orientation and a second position with a substantially vertical orientation. See Figures 2 and 3. The seat also has a substantially flat sitting surface.

A back rest 44 connects the side frames. A wheel 18, 29 is connected to each of the front and back legs. Substantially u-shaped horizontal support members 32, 34 connect the legs of each frame and a padded region 31 is located on at least one of the horizontal supports. Cross members 36, 38 connect the mid-section of the legs. The horizontal support member 26 that connects the front legs is curved outward away from the legs. See Figure 3. A locking mechanism 41, 48 is located on each of the side frames, wherein the locking mechanism maintains the side frames spaced a part and releasable to allow the side frames to pivot inwardly toward the seat when the seat is in the second position and at least one side frame can pivot approximately 180 degrees when the locking mechanism is released. See Figures 1 and 9. When the seat is in the second position, it is at least partially in front of the front legs. See Figure 2. Also, the support brackets are laterally spaced from the second rear section and are disposed on either side of the seat. See Figure 1.

Johnson does not disclose that the seat comprises an undersurface having a plurality of walled recesses with at least one recess having an open side or a partially open side. However, Durkan, Jr. teaches that the practice of providing a seat with an undersurface having a plurality of walled recesses 30 was old and well known in the art at the time the invention was made. The plurality of recesses of Durkan, Jr. include at least one recess having an open side and at least one recess having a partially open side. See Figures 2 and 5 and column 4, lines 14-23. From the teachings of Durkan, Jr., providing the seat of Johnson with a plurality of walled recesses, wherein at least one recess has an open side and at least one recess has a partially open side, would

have been obvious to one of ordinary skill in the art at the time the invention was made.
This would strengthen the seat by increasing its modulus.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson US 5,558,358 in view of Durkan, Jr. US 4,438,603 as applied to claim 15 above, and further in view of Hara et al. US 6,494,469.

Johnson, as modified by Durkan, Jr., does not disclose brakes that engage the wheels on the back legs and hand brake actuators positioned on the side frames. However, Hara et al. teaches that the practice of providing an ambulatory device with brakes 120 that engage the wheels on the back legs and hand brake actuators 79 positioned on the side frames was old and well known in the art at the time the invention was made. See Figures 1-3 and column 13, lines 6-8. From the teachings of Hara et al., providing the device of Johnson as modified by Durkan, Jr. with brakes that engage the wheels on the back legs and hand brake actuators positioned on the side frames would have been obvious to one of ordinary skill in the art at the time the invention was made. This would give the operator control over the movement of the device.

Claims 44, 48, 56, 57, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson US 5,558,358 in view of Durkan, Jr. US 4,438,603 as applied to claims 15, 46, 55, and 58 above, and further in view of Schmerl US 3,354,893.

Johnson, as modified by Durkan, Jr., does not disclose that the brackets secure the seat to the cross members when the seat is in the first position, that the brackets support the device when the device is subjected to a lateral force such that the lateral force is distributed along the brackets and across the seat, and that the brackets include notches in the flanges.

However, Schmerl teaches that the practice of providing notches in the flanges of support brackets 37 was old and well known in the art at the time the invention was made. The notches of Schmerl are formed by the curved undersurface of the flanges of the brackets 37 and secure the seat to the cross-members. These notches enable the support brackets to provide support to the device when the seat is in the first position, including distributing lateral force along the brackets and across the seat. See Figures 1-3. From the teachings of Schmerl, providing the device of Johnson, as modified by Durkan, Jr., with notches in the flanges of the support brackets to secure the seat to the cross members when the seat is in the first position and support the device through the brackets when the device is subjected to a lateral force, such that the lateral force is distributed along the brackets and across the seat, would have been obvious to one of ordinary skill in the art at the time the invention was made. This would help maintain the seat in position in the cross members and would increase the rigidity of the device.

Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson US 5,558,358 in view of Durkan, Jr. US 4,438,603 as applied to claim 15 above, and further in view of Battiston US 6,371,142.

Johnson, as modified by Durkan, Jr., does not disclose length adjustment means on the front and back legs. However, Battiston teaches the old and well known practice of providing front and back legs of an ambulatory device with length adjustment means 20, 22. See Figure 1. From the teachings of Battiston, providing the legs of Johnson, as modified by Durkan, Jr., with length adjustment means would have been obvious to one of ordinary skill in the art at the time the invention was made. This would allow the legs to be adjusted for height to suit the individual user.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson US 5,558,358 in view of Durkan, Jr. US 4,438,603 as applied to claim 15 above, and further in view of Woods et al. US 5,353,824.

Johnson, as modified by Durkan, Jr., does not disclose that the seat includes a handle. However, Woods et al. teaches the old and well known practice of providing a seat with a handle 38. See column 4, line 67, through column 5, line 5. From the teachings of Woods et al., providing the seat of Johnson, as modified by Durkan, Jr., with a handle would have been obvious to one of ordinary skill in the art at the time the invention was made. This would aid the user in moving the seat between positions.

Response to Arguments

Applicant's arguments filed September 4, 2003 have been fully considered but they are not persuasive.

The arguments directed toward the previous terms of rejection are moot in light of the new terms of rejection outlined above. Contrary to Applicant's assertion on page 8 of the remarks that none of the cited references teach the claimed support bracket, Schmerl teaches such a support bracket. Also, the brackets 81 of Aluyan, when attached to rods 79 and seat 33, would provide lateral support to the side frames, and this structure would have sufficient rigidity to distribute such lateral force across the seat. Although brackets 81 turn, they are firmly engaged with braces 43 when the seat is in the lowered position. Applicant's statements on page 10 that providing lateral support through the brackets of Aluyan is "highly unlikely" and distributing the force across the seat is "even more highly unlikely" are unsubstantiated speculation.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Christopher Bottorff

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